

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEVIN A BROWN,

Plaintiff,

v.

MARK SCHNOOR, TERRY MCELRAVY,
PAT GLEBE, D DAHNE, KERRY
MCTARSNEY,

Defendants.

CASE NO. C14-5099 RJB-JRC

ORDER DENYING PLAINTIFF'S
REQUEST FOR APPOINTMENT OF
COUNSEL

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR1, MJR3 and MJR4.

Currently before the Court is plaintiff's motion for appointment of counsel (Dkt. 35). Plaintiff states that the action is complex and that he has already made mistakes in litigating (*id.*). Defendants have a motion for summary judgment pending and plaintiff has filed a response (Dkt. 33 and 39). Defendants oppose plaintiff's motion for appointment of counsel stating that this is plaintiff's second such motion (Dkt. 37). Defendants argue that plaintiff fails to show that he has

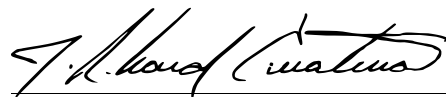
1 an insufficient grasp of the legal issues involved in his case or an inadequate ability to articulate
2 the factual basis of his claim (Dkt. 37, p. 2) (*citing Agyeman v. Corr. Corp. of America*, 390 F.3d
3 1101, 1103 (9th Cir. 2004)).

4 There is no right to have counsel appointed in cases brought pursuant to 42 U.S.C. § 1983.
5 Although the Court can request counsel to represent a party, 28 U.S.C. § 1915(e)(1), the Court may
6 do so only in exceptional circumstances. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir.
7 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984); *Aldabe v. Aldabe*, 616 F.2d 1089
8 (9th Cir. 1980). A finding of exceptional circumstances requires the Court to evaluate both the
9 likelihood of success on the merits and the ability of plaintiff to articulate his claims pro se in light of
10 the complexity of the legal issues involved. *Wilborn*, 789 F.2d at 1331.

11 Plaintiff is able to articulate his claims. Further, the Court record reflects that he conducted
12 extensive discovery (Dkt. 31). The action involves alleged racial slurs and retaliation. However,
13 plaintiff has not, as yet, demonstrated a likelihood of success on these claims. The Court does not
14 find exceptional circumstances that would warrant appointment of counsel at this time.

15 Accordingly the Court denies plaintiff's motion for appointment of counsel.

16 Dated this 21st day of January, 2015.

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18 J. Richard Creatura
19 United States Magistrate Judge
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